IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1198 OF 2005

Hari Sopan Andhare ... Appellant

V/s

Kalawati Tukaram Sonawane & ors. ... Respondents

Mr. Macchindra Patil for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 27TH SEPT., 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Pandharpur dated 30.4.2005 dismissing the appeal with certain modifications relating to the shares of the parties and confirming the remaining findings recorded by the Trial Court by his order dated 21.7.2000.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiffs filed the suit for partition and separate possession of their shares in the suit

property. According to the plaintiffs, properties are ancestral joint family properties and suit properties were originally belong to one Mahadev who died on 6.12.1981. Defendant No.1 - widow of Mahadev and Tukaram - son of Mahadev succeeded to the suit properties. Tukaram died on 31.1.1984. Present plaintiffs are the legal heirs and successors of Tukaram. Thus, plaintiffs have 1/2 share and defendant No.1 has 1/2 share in the suit properties. Hence the suit.

Defendant No.1 contested the suit inter-alia denying the allegations made by the plaintiffs submitting that they have sold properties on 1.9.1990 to defendant Nos. 2 and 3 for legal interest and, therefore, the present suit for partition is not tenable and sought dismissal of the suit.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion on the basis of available evidence that the plaintiffs have proved that plaintiffs as well as defendant No.1 had 1/2 share in the properties. It was further held that sale deed executed by defendant No.1 in favour of defendant Nos. 2 and 3 on 1.1.1990 was not binding on the share of the

plaintiffs. It was further held that defendant Nos. 2 and 3 failed to prove that the defendant No.1 sold the suit properties to them for legal necessity of the family and suit came to be decreed holding that plaintiffs and defendant No.1 had 1/2 share each in the suit properties and sale deed executed by defendant Nos. 2 and 3 was not binding on the share of the plaintiffs and the suit properties. It was further decreed that defendant Nos. 4 and 5 should remove their shed in the suit properties within two months from the date of the order.

5. The appeal was carried to the Court of Addl. District Judge, Pandharpur. The learned Addl. District Judge, after hearing both parties concurred with the findings recorded by the Trial Court and dismissed the appeal with certain modifications. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this case. The lower appellate Court has modified the order of the Trial Court to the extent that plaintiffs have 4/10 share, whereas defendant No.1 has 6/10 share in the suit property. It is also held on the basis of

evidence on record that the plaintiffs had proved that the alienation by the defendant No.1 in the property in favour of defendant Nos. 2 and 3 was illegal and, therefore, was not binding on the plaintiffs and such alienation was not for legal necessity. The construction made by the defendants 4 and 5 was also hit by the doctrine of lis-pendense and, as such, the order passed by the Trial Court was confirmed with above noted modification.

7. Under the circumstances, I am satisfied that both the Courts below have appreciated the available evidence in proper perspective. The learned lower appellate Court while modifying the shares of the parties concerned, has correctly appreciated the facts on the basis of provision of Sections 6 and 8 of Hindu Succession Act.

8. In the result, I am satisfied that there is no scope for interference in this appeal by this Court and hence the appeal stands dismissed with no order as to costs.

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